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Attorneys for Defendant Bank of America, N.A.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

JAMES L. BARKER, and
JEANNE A. BARKER,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,
ONEWEST BANK, CIT BANK, N.A.,
FIRST AMERICAN TITLE COMPANY
OF MONTANA, INC., Trustee,
CHARLES PETERSON, Trustee

Defendants.

Case No. 1:17-cv-00021-SPW-TJC

**DEFENDANT BANK OF
AMERICA, N.A.'S MOTION TO
DISMISS**

Defendant Bank of America, N.A. (“Defendant” or “BANA”), by and through its counsel of record, hereby moves this Court for the dismissal of Plaintiffs’ First Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), because Plaintiffs fail to state any claim against Defendant upon which

relief can be granted. The bases for this motion are set forth in a memorandum filed herewith. Defendant respectfully request that its motion be granted and that the First Amended Complaint be dismissed with prejudice. Pursuant to Local Rule 7.1(c)(1), counsel for Defendant contacted counsel for Plaintiff concerning this motion, but we have not heard back from counsel for Plaintiff. It is presumed that counsel for Plaintiff opposes this motion.

DATED this 23rd day of February, 2017.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Mark D. Etchart

Mark D. Etchart

Attorneys for Defendant Bank of America, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2017, a true copy of the foregoing was served:

Via ECF to the following parties:

Karl Knuchel
Karl Knuchel, P.C.
PO BOX 953
Livingston, MT 59047

/s/ Mark D. Etchart

BROWNING, KALECZYC, BERRY & HOVEN, P.C.